

ANAND BABLA

v.

DEVAKAR PRASAD & THE ATTORNEY-GENERAL

[HIGH COURT, 1998 (Tuivaga CJ) 18 August]

Constitution- Parliament- whether subject to scrutiny by the High Court- whether internal disciplinary proceedings subject to fundamental constitutional rights and freedoms- whether suspension of a member of Parliament constitutional- whether standing orders constitutional. Constitution (1990), Chapter II, Sections 63 (1), 63 (3), 67 (1) – Parliamentary Powers and Privileges Act (Cap 5) Section 28- High Court Act (Cap 13) Section 22 (1).

The Plaintiff, who was a member of the House of Representatives, was suspended from the House after the Privileges Committee of the House found him to be in contempt of Parliament. The Plaintiff sought declarations that his suspension was unconstitutional. The High Court, relying on established precedents HELD: (1) absent specific constitutional provisions to the contrary the internal proceedings of Parliament are not subject to judicial scrutiny and (2) that neither the Plaintiffs freedom of movement nor his right to represent his constituents had been violated by his suspension.

Cases cited:

A.G. of Ceylon v. D'Olivera [1962] 11 All E.R. 1069
Bradlaugh v. Gossett (1884) Q.B.D. 271
Sakeasi Butadroka v. Attorney-General (1993) 39 FLR 115
Church of Scientology of California v. Johnson Smith
 [1972] 1 All E.R. 379
Keilley v. Carson (1842) - 4 Moo PCC 63
Madhavan v. Falvey & Ors (1973) 19 FLR 140
Rost v. Edwards [1990] 2 All E.R. 641

Proceedings for declaratory Judgment in the High Court.

Sir Vijay R. Singh Counsel for the Applicant
The Solicitor-General (N. Nand) with *E. Walker* for the Respondents

Tuivaga CJ:

This originating motion is brought by Anand Babla, the Indian Member in the House of Representatives for Tavua/Ra West Constituency ("Babla" henceforth) claiming that the decision of the Deputy Speaker suspending him from the House for two consecutive meetings was unlawful and made without jurisdiction or in excess of jurisdiction.

The case arose in this way. In September 1997 Babla submitted in a letter to

the Secretary-General to Parliament several questions on which he wanted answers relating to various payments made to Ministers, Speaker, President of the Senate and Leader of the Opposition.

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On November 14, 1997 the Secretary-General wrote to Babla informing him that his questions had been considered, and were disallowed. Part of the reply reads:

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“As for your question which relates to the number of official trips taken by all Government Ministers, etc. since 1994, this has also been disallowed by the Speaker, as it is felt that the time and staff resources required from different Ministries to collect the information cannot be justified”

On 21 November, 1997 Babla wrote back to the Secretary-General.

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“Firstly, it is my entitlement, as an elected representative of the people, to ask questions which pertain to public funds. This is clearly contained in Standing Order 29.

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..... On the second question on that of official trips etc. again your answer that “time and staff constraints make the collection of this information unjustified,” is again an obvious attempt on your part to protect the interest of the Speaker, Government Ministers, President of the Senate, Senators, Members of Parliament and yourself who is implicated in this question. Such unethical standards from you on the advice of the Speaker, sets a dangerous precedent on questions pertaining to the use of public funds.

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If Parliament cannot guarantee transparency and accountability of funds, how can we expect any better from others?

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I expect a comprehensive answer to my questions to be tabled in Parliament or I shall be compelled to take this matter up by way of a parliamentary motion.”

Babla apparently not content to leave the matter there saw fit to tell the “Fiji Times” about his complaints and allegations which were given front-page publicity. The Speaker obviously considered Babla’s conduct as seriously out of line and should be inquired into. The Speaker brought up the matter in the House in these terms:

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“Honourable Members, the Member for Tavua (A. Babla) is not in the House but my attention has been drawn to an article which appeared on the front page of the Fiji Times on Saturday, November 22nd titled “MP seeks answers on Ministers’ trips” by Geoffrey Smith.

The published article contained part of my reply to a question raised by the Hon. Member for Tavua. For the information of the House although he is not here, I will read out the question as the Honourable Member for Tavua has already deemed it fit to advise the media".

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The Speaker then gave details of the questions Babla had raised. The Speaker explained the position as follows:

"A question shall not be asked seeking information which can be found in accessible documents or ordinary works of reference.

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"As one who has never worked in a Government department, the honourable Member can be excused for not realising the mammoth task involved in gathering such data for the last four years from different ministries taking into account that this would have to be done manually: gathering of residential telephone bills for the last four years from different ministers, some of whom have now left Cabinet.

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..... I will leave it there for the time being because the honourable Member is not here. Instead of the honourable member coming back to me he has seen fit to give his questions to the press and I deeply regret that. If that was not enough, the honourable Member, following my decision, went further in the papers to say that the reaction to his queries was an obvious attempt to protect the interests of the Speaker, Government Ministers, President of the Senate, Senators, Members of Parliament and the Secretary-General.

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My decision is based on Standing Order 31 which is very transparent. I want to inform the honourable Member for Tavua to substantiate his claim that "this was an obvious attempt to protect the interests of the Speaker and Members of Parliament". I am giving him 24 hours to substantiate the accuracy of his own statement in writing and following that, I will decide what to do." "

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On Tuesday, 25 November, 1997 when the House met Babla was present. He was questioned by the Speaker about the allegations he was making. The exchange in Parliament that morning is reported in Hansard as follows:

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"MR. SPEAKER - Honourable Member, I just want to ask whether you still stand by your statement or not, after hearing my communication.

HON. A. BABLA - No.

MR. SPEAKER.- Do you still stand by it? HON. A. BABLA -

No.

A MR. SPEAKER - Are you withdrawing it?

HON. A. BABLA - Yes.

B MR. SPEAKER - Therefore, what you have been saying is not true, that the ruling from the Chair was to protect the interests of those whom I have already mentioned - the honourable Prime Minister, the Leader of Opposition, parliamentarians, et cetera. So that statement is not correct?

HON. A. BABLA - "Yes."

On the Fiji One news later that day Babla spoke to TV One which broadcast this statement by Babla in their evening news service:

C "I stand by my question and I was this morning deeply disturbed by the Speaker's conduct of the matter. I had replied to the Speaker under considerable duress. I asked for time to reconsider the situation, but he did not allow me to respond, to give me time, I was under pressure to withdraw my remarks."

D On Wednesday, 26 November 1997 the House passed a resolution that Babla's conduct be referred to the Privileges Committee of the House to determine and report whether his conduct constituted contempt of the House.

E After their deliberations on the matter the Privileges Committee concluded that Babla's conduct constituted contempt and as already noted he was suspended from the House for two sittings.

In his affidavit the Speaker deposed that the inquiry into Babla's conduct was part of the internal proceedings of the House of Representatives and therefore was not subject to the jurisdiction of the court.

F In this case Babla claims that the decision of the Deputy Speaker of the House of Representatives to suspend him -

- G 1. Is unlawful as being made without jurisdiction or in excess of jurisdiction;
2. contravenes sections 4 and 13(1) of the Constitution by denying the applicant his freedom of speech in the House on all matters under its consideration;
3. contravenes sections 4 and 14(1) of the Constitution by denying the applicant his freedom to assemble and associate with other members in the chamber and in the precincts of the House;

4. contravenes 4 and 15(1) of the Constitution by denying the applicant the freedom of movement in and within the precincts of the House customarily enjoyed by other members of the House; A
5. contravenes the Constitution by usurping the functions of the judiciary, in particular section 11 of the Constitution, in that the first respondent has purported to adjudicate and impose a penalty upon the applicant for an alleged offence against section 20(h) of Parliamentary Powers and Privileges Act. B
6. contravenes the Applicant's right conferred upon him by Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian constituency. C
7. contravenes paragraphs (1) and (3) of section 41 of the Constitution to the disadvantage of the applicant"

and consequently Babla seeks the following relief and remedies -

- "1. A Declaration that the Deputy Speaker and House of Representatives had no lawful power to suspend him from the service of the House for two consecutive meetings of the House. D
2. A Declaration that the Deputy Speaker and House of Representatives had no jurisdiction or power to penalise him by suspending him as aforesaid for an alleged criminal offence against section 20(h) of the Parliamentary Powers and Privileges Act Cap 5 and in purporting so to do, infringed the protection afforded to the applicant by section 11 of the Constitution. E
3. A Declaration that the Deputy Speaker had no lawful power or jurisdiction to cause him to be removed from the precincts of the House. F
4. A Declaration that his fundamental freedoms conferred by sections 4, 13(1), 14(1) and 15(1) of the Constitution have been contravened by reason of his suspension. G
5. A Declaration that his suspension contravened the rights conferred upon him under Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian Constituency."

In the judgment of the Court of Appeal in Madhavan v. Falvey & Ors (1973) 19 FLR 140 a similar issue was raised and there the court held that the House of Representatives had exclusive control over its internal proceedings and

A over the conduct of its members. It is a matter of parliamentary privilege sanctioned both by the common law and the Constitution. In that case the Court referred to relevant provisions of the Constitution and cited in support two short passages from the judgment in Bradlaugh v. Gossett (1884) Q.B.D. 271 where at page 275 Lord Coleridge C.J. said:

“What is said or done within the walls of Parliament cannot be enquired into in a court of law.”

B and at page 278, Stephen J. said:

“I think that the House of Commons is not subject to the control of Her Majesty’s Courts in its administration of that part of the statute law which has relation to its own internal proceedings.....”

C Reference was also made to this statement from Dicey on the “*Law of the Constitution*” (10th Edn):

“No court today would seriously challenge that matters concerning the proceedings within either House are to be discussed and adjudged in that House and not elsewhere.”

D Sir Vijay Singh, counsel for Babla, sought in his written and oral submissions to argue that the decision in Madhavan case was drawn too widely and therefore *obiter*. Sir Vijay submitted that the decision cannot be regarded as an authority on the powers of the House of Representatives to punish for contempt. This is because no such powers are given under the provisions of the Parliamentary Powers and Privileges Act (Cap. 5) and therefore clearly
E the House cannot arrogate to itself such powers. Sir Vijay criticised in particular the following statement at page 146 in Madhavan’s case:

F “The Parliamentary Powers and Privileges Ordinance provides for some powers and privileges but does not purport to be an exclusive list and is concerned largely with procedural matters and offences by individuals. It is not in our opinion intended by implication to abolish those established privileges of the House itself, the power to punish for contempt and the exclusive right to control its own internal proceedings.”

G Sir Vijay submitted that an analysis of the Act shows that much more than procedural matters are dealt with there; it covers all applicable aspects of parliamentary privileges. Moreover, the Act deliberately precludes the House from the power to punish for contempt which is vested in the judiciary. Sir Vijay contended that the House of Representatives as established by the 1970 and 1990 Constitutions came into existence with no established privileges of its own. Sir Vijay said the powers and privileges of the House to control its internal proceedings are limited to those contained in section 63(1) of the 1990 Constitution and the Act. Parliament however could abridge, enlarge or

otherwise amend the privileges contained under those provisions but these can only be effected by legislative processes pursuant to the provisions of the Constitution. Sir Vijay submitted the House could have provided for itself the same regime of powers and privileges as is vested in the House of Commons of the United Kingdom under similar legislation to that of section 49 of the Australian Federal Constitution, which states:

“The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and committees of each House, shall be such as are declared by Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the time of the establishment of the Commonwealth.”

In the absence of such legislation, the powers and privileges of the House of Representatives are necessarily confined to those provided under section 63(1) of the Constitution and those contained in the Parliamentary Powers and Privileges Act (Cap.5). Section 63(1) of the Constitution reads:

“Regulation of procedure in each House

63.-(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including, in particular, the orderly conduct of its own proceedings”

But as can be seen the Constitution or the Act makes no specific provisions for conferment of any power on the House to punish any member for contempt. Thus Sir Vijay argued that in relation to the case of Babla the House was purporting to exercise a power it did not have or possess. According to Sir Vijay the House could have under the provisions of section 63(3) given itself the requisite powers to deal with any form of disorderly or contemptuous conduct by a member of the House. Section 63(3) of the Constitution states:-

63.-(3) Parliament may, for the purpose of the orderly and effective discharge of the business of each House, make provision for the powers, privileges and immunities of each House and the committees and members thereof.”

Sir Vijay contends that the House has not enacted under section 63(3) any legislation relating to parliamentary powers and privileges but the provisions of the Act have only dealt with certain aspects of those powers and privileges. However, the House has full control over its proceedings by virtue of section 63(1) under which Standing Orders are made for the conduct of its business. The Standing Orders made by the House to regulate its proceedings embody some of the law relating to parliamentary privileges relating to the conduct of the members of the House. Sir Vijay therefore questions the correctness and soundness of the statement in the Madhavan's case earlier quoted to the effect

that established privileges of the House have been preserved and the Act has not by implication abolished the power to punish for contempt and the right to control its own internal proceedings. Sir Vijay places much reliance on the case of Keilley v. Carson (1842) - 4 Moo PCC 63 and in particular on what Baron Parke said at page 89:-

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“But the power of punishing any one for past misconduct as contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the facts may be, is of a different character, and by no means essentially necessary for the exercise of its functions by a local legislature, whether representative or not It is said however, that this power belongs to the House of Commons in England; and this, it is contended, affords authority for holding that it belongs as a legal incident, by the Common Law, to an Assembly with analogous functions. But the reason why the House of Commons has this power is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms part of the common law of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one.”

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Sir Vijay has made valiant attempt to circumscribe severely the powers of the House of Representatives to discipline its members for contempt in the circumstances disclosed by Babla's conduct. However, whatever the true legal merits of his submissions in this case, I must say that this Court sitting at first instance is bound as a matter of precedent to follow the law on parliamentary privileges as laid down in Madhavan's case. As was noted earlier that was a decision of the Court of Appeal which in hierarchical terms stands above this court in decisional precedence. That decision was followed by this court in the case of Sakeasi Butadroka v. Attorney-General (1993) 39 FLR 115 where Ashton-Lewis J. at page 126 observed:

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Thus, as I understand it the decision in Madhavan's case established that the privilege of the House of Representatives of Fiji to control its own internal proceedings was part of the law of Fiji. Also, the House of Representatives has exclusive control over its own internal proceedings. As such, the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court. The High Court can only inquire into the internal proceedings of the House where it can do so in its capacity as guardian of the Constitution, and that will only be where the internal proceedings of the House are specifically provided for in the Constitution, such as found in Section 67(1)

where the Constitution specifically sets out the requirement that someone must preside at a sitting of the House of Representatives and defines who it is that should preside. The jurisdiction of the Court to inquire in such an instance being based on the fact that a part of the internal procedure of the House of Representatives has been specifically incorporated as a provision of the Constitution.

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It follows from this that where a procedure of the House of Representatives is not specifically incorporated into the Constitution, then the High Court has no jurisdiction to inquire into the internal proceedings of the House. From this, it would further follow that the manner of the application of Standing Orders by the Speaker, and the activities of the privileges committee, in matters concerning the internal proceedings of the House of Representatives, unless specifically provided for in the Constitution, are not cognisable in the Court."

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I am satisfied that the inquiry into Babla's conduct by the Privileges Committee of the House and the findings thereof are part of the internal proceedings of the House. As such this court cannot inquire into them. The court has no jurisdiction to do so.

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Sir Vijay also contended in his argument that the House of Representatives as a latter-day institution could not claim the same ancient usage and prescription; the *lex et consuetudo Parliamenti* (the law and custom of Parliament) as part of the common law as was explained in Keilley's case. It appears however that the common law of England also applies to Fiji, including ancient usage and custom of Parliament which are part of the common law of Fiji by virtue of section 22(1) of the High Court Act which states:

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"22.-(1) The common law, the rules of equity and the statutes of general application which were in force in England at the date when Fiji obtained a local legislature, that is to say, on the second day of January, 1875 shall be in force within Fiji

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The Solicitor-General Mr. N. Nand in opposing this motion by Babla has submitted that the issues complained of in this case are all matters relating wholly to the internal proceedings of the House of Representatives. He said that the Standing Orders of the House could be described as being the statute law of the House which control the entire proceedings of the House. They regulate all proceedings on meeting and business of the House including rules on debates and privileges, motions and voting, standing committees, and select committees and the like. The members of the House enjoy as an incident of the inherent functions of the House various privileges. Breach of a privilege by a member may be dealt with under the Standing Orders or under the Parliamentary Powers and Privileges Act (Cap.5). Section 28 of the Act which contains an exclusion clause states:

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A "S. 28 - Neither the Speaker, Deputy Speaker, President or Vice President or any other officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in such officer by or under this Act."

B Mr. Nand submitted that the courts over many years now have recognised that the internal proceedings in Parliament are not subject to control by the courts and he has quoted cases to illustrate the point. It is true that injustice may be done to a member of the House but the remedy is not with the courts. He said the explanation for this is to be found in the words of Lord Coleridge C.J. in Bradlaugh v Gossett (1884) 12 Q.B.D.27 where at page 277 he said:

C "The history of England and the resolutions of the House of Commons itself, show that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy be it lies not in actions in the courts of law, but by an appeal to the constituencies whom the House of Commons represents."

D Therein and as far back in legal history lies the reason why courts will not encroach on the ambit of jurisdiction of Parliament pertaining to parliamentary privileges. The privileges are part of the law and custom of Parliament. Mr. Nand has referred to quotations from several recent cases about the true relationship between the courts and Parliament. It suffices for the purpose of this case if I just mentioned two of them. In Church of Scientology of California v. Johnson Smith [1972] 1 All E.R. 379 an action was brought for
E libel against the defendant, a member of parliament, for defamatory remarks made by the defendant during a television interview. There the court ruled that parliamentary proceedings could not be challenged in court. In this case Browne J. at page 381 observed:

F "And I accept his (A-G's) proposition which I have already tried to quote, that is, that what is said or done in the House in the course of proceedings there cannot be examined outside Parliament for the purpose of supporting a course of action even though the course of action itself arises out of something done outside the House. In my view this conclusion is supported both by principle and authority."

G The other case is Rost v. Edwards [1990] 2 All E.R. 641 where at page 645 Poppelwell J. stated:

"The Courts must always be sensitive to the rights and privileges of Parliament and the constitutional importance of Parliament retaining control over its own proceedings. Equally, as Viscount Radcliffe put it in A.G. of Ceylon v D'Olivera [1962] 1 All ER 1069, the House will be anxious to confine its own or its

members' privileges to the minimum infringement of the liberties of others. Mutual respect for an understanding of each others respective rights and privileges are an essential ingredient in the relationship between Parliament and the Courts."

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I am satisfied both on principle and authority that the same legal relationship applies in Fiji between the Courts and Parliament. It is important that these two most revered institutions in the land should recognise and respect each other's jurisdiction. This is necessary to ensure the proper discharge of their respective constitutional responsibilities. It is not a mere matter of comity but one of well-established law and custom.

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On the other contentions of Babla on which declarations are being sought from this Court, I find them to have also been adequately dealt with in the Solicitor-General's submissions. If I may say so, his approach to them is clear and perceptive and one I would also adopt.

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One of these contentions is that Babla's suspension contravened his fundamental freedoms as conferred by Sections 4, 13(1), 14(1) and 15(1) of the Constitution. Those sections will be found under Chapter II of the Constitution which is concerned with the protection of the fundamental rights and freedom of the individual. Similar contentions had been raised in Butadroka's case and the following passage from the judgment of Ashton-Lewis J. at page 135 is apposite:

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"These dicta, in conjunction with an examination of the proviso's themselves set out in sections 11, 12, 13, 14 and 15 of the Constitution assist me in reaching the conclusion that the Fundamental freedoms set out in those sections are not absolute, but are tempered generally by the need to place their operation in the context of the competing interests of others in the setting to which they are to be applied.

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The limitation upon mutual operation of those sections in Chapter 2 of the Constitution when applied side by side with the authoritative decision in Madhavan's case, which would require the Constitution to do that which it has not done, i.e. to make specific provision for the application of Chapter 2 provisions to the internal proceedings of Parliament, further re-in forces me to the view that an alleged breach of any of Chapter 2 provisions of the Constitution arising from internal proceedings of the House of Representatives is neither cognisable nor reviewable in the High Court."

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That conclusion by the Court in that case is unexceptional which I would also apply in relation to the circumstances of the present case. In the result I would reject as of no substance any of those contentions.

A The other contention relied upon is that Babla's suspension contravened rights conferred upon him under Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian Constituency. A similar contention was also advanced in the Butadroka case where at page 49 of the judgment Ashton-Lewis J. explained why he rejected it:

B "Finally Mr. Stanton submitted that the suspension of the Plaintiff was void because the rights of all the constituents of Rewa to be represented by the Plaintiff in the Parliament had been breached. I am not persuaded by this submission.

C Under section 19 of the Constitution it is for a constituent of Rewa himself to apply to the Court. The Plaintiff cannot apply on his behalf. There has been no such application and if there was would such constituent be able to point to any breach of his Fundamental Freedom by the Plaintiff's suspension from the House of Representatives? Those Fundamental Freedoms exercisable by him individually are in no way violated by the Plaintiff's suspension."

D Here too I accept the judge's finding as sound in law and would make a similar finding in this case.

In the result the motion by Babla is dismissed with costs.

(Motion dismissed.)

E (Editor's Note: The 1997 Constitution of Fiji (Constitutional Amendment Act 13/1997) commenced on 27 July 1998)

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